

**RULES
OF
THE DEPARTMENT OF COMMERCE AND INSURANCE
DIVISION OF INSURANCE**

**CHAPTER 0780—1—66
STANDARDS AND COMMISSIONER'S AUTHORITY FOR COMPANIES
DEEMED TO BE IN HAZARDOUS FINANCIAL CONDITION**

TABLE OF CONTENTS

0780—1—66—.01	Authority	0780—1—66—.04	Commissioner's Authority
0780—1—66—.02	Purpose	0780—1—66—.05	Judicial Review
0780—1—66—.03	Standards	0780—1—66—.06	Severability

0780—1—66—.01 AUTHORITY

This chapter is adopted and promulgated by the Tennessee Department of Commerce and Insurance pursuant to *T.C.A. §§4—5—101 et seq., 56—1—408, 56—1—409, 56—2—301, 56—9—101, 56—9—106, 56—9—503, 56—9—508, 56—11—206, and 56—11—209.*

Authority: *T.C.A. §§4—5—101 et seq., 56—1—408, 56—1—409, 56—2—301, 56—9—101, 56—9—106, 56—9—503, 56—9—508, 56—11—206 and 56—11—209. Administrative History:* Original rule filed December 20, 1993; effective March 5, 1994.

0780—1—66—.02 PURPOSE

- (1) The purpose of this chapter is to set forth the standards which the Commissioner may use for identifying insurers found to be in such condition as to render the further transaction or continuance of their business hazardous, financially or otherwise, to the public, their creditors or to holders of their policies or certificates of insurance.
- (2) This chapter is intended to aid in early detection of any potentially dangerous condition in an insurer and to afford prompt application of appropriate corrective measures, thereby implementing express purposes of the Insurers' Rehabilitation and Liquidation Act, *T.C.A. §56—9—101 et seq.*
- (3) This chapter shall not be interpreted to limit the powers granted the Commissioner by any laws or parts of laws of this state, nor shall this chapter be interpreted to supersede any laws or parts of laws of this state.

Authority: *T.C.A. §§56—1—408, 56—1—409, 56—2—301, 56—9—101, 56—9—106, 56—9—503, 56—9—508, 56—11—206 and 56—11—209. Administrative History:* Original rule filed December 20, 1993; effective March 5, 1994.

0780—1—66—.03 STANDARDS

- (1) The following standards, either singly or a combination of two or more, may be considered by the Commissioner to determine whether the continued operation of any insurer transacting an insurance business in this state might be deemed to be hazardous, financially or otherwise, to the policyholders, creditors or the general public. The Commissioner may consider, in addition to any other relevant factors, the following:
 - (a) Adverse findings reported in financial condition and market conduct examination reports;
 - (b) The National Association of Insurance Commissioners Insurance Regulatory Information System and its related reports;
 - (c) The ratios of commission expense, general insurance expense, policy benefits and reserve increases as to annual premium and net investment income which could lead to an impairment of capital and surplus;

(Rule 0780—1—66—.03, continued)

- (d) The insurer's asset portfolio when viewed in light of current economic conditions is not of sufficient value, liquidity, or diversity to assure the company's ability to meet its outstanding obligations as they mature;
- (e) The ability of an assuming reinsurer to perform and whether the insurer's reinsurance program provides sufficient protection for the company's remaining surplus after taking into account the insurer's cash flow and the classes of business written as well as the financial condition of the assuming reinsurer;
- (f) Whether the insurer's operating loss in the last twelve-month period or any shorter period of time, including but not limited to net capital gain or loss, change in non-admitted assets, and cash dividends paid to shareholders, is greater than fifty percent (50%) of the insurer's remaining surplus as regards to policyholders in excess of the minimum required;
- (g) Whether any affiliate, subsidiary or reinsurer is insolvent, threatened with insolvency or delinquent in payment of its monetary or other obligations;
- (h) Contingent liabilities, pledges or guaranties which either individually or collectively involve a total amount which in the opinion of the Commissioner may affect the solvency of the insurer;
- (i) Whether any "controlling person" as defined in *T.C.A. §§56—10—201 and 56—11—201* of an insurer is delinquent in the transmitting to, or payment of, net premiums to such insurer;
- (j) The age and collectibility of receivables;
- (k) Whether the management of an insurer, including officers, directors, or any other person who directly or indirectly controls the operation of the insurer, fails to possess and demonstrate the competence, fitness and reputation deemed necessary to serve the insurer in such position;
- (l) Whether the management of an insurer has failed to respond to inquiries relative to the condition of the insurer or has furnished false and misleading information concerning an inquiry;
- (m) Whether management of an insurer either has filed any false or misleading sworn financial statement, or has released false or misleading financial statement to lending institutions or to the general public, or has made a false or misleading entry, or has omitted an entry of material amount in the books of the insurer;
- (n) Whether the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner;
- (o) Whether the company has experienced or will experience in the foreseeable future cash flow and/or liquidity problems.

Authority: *T.C.A. §§ 56—1—408, 56—1—409, 56—2—301, 56-9-101, 56—9—106, 56—9—503, 56—9—508, 56—11—206 and 56—11—209. Administrative History:* Original rule filed December 20, 1993; effective March 5, 1994.

0780—1—66—.04 COMMISSIONER'S AUTHORITY

- (1) For the purposes of making a determination of an insurer's financial condition under this chapter, the Commissioner may:
 - (a) Disregard any credit or amount receivable resulting from transactions with a reinsurer which is insolvent, impaired or otherwise subject to a delinquency proceeding;
 - (b) Make appropriate adjustments to asset values attributable to investments in or transactions with parents, subsidiaries, or affiliates;

(Rule 0780—1—66—.04, continued)

- (c) Refuse to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor;
 - (d) Increase the insurer's liability in an amount equal to any contingent liability, pledge, or guarantee not otherwise included if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken within the next twelve-month period.
- (2) If the Commissioner determines that the continued operation of the insurer licensed to transact business in this state may be hazardous to the policyholders, creditors or the general public, then the Commissioner may, upon a determination, issue an order consistent with applicable statutes requiring the insurer to:
- (a) Reduce the total amount of present and potential liability for policy benefits by reinsurance;
 - (b) Reduce, suspend or limit the volume of business being accepted or renewed;
 - (c) Reduce general insurance and commission expenses by specified methods;
 - (d) Increase the insurer's capital and surplus;
 - (e) Suspend or limit the declaration and payment of dividend by an insurer to its stockholders or to its policyholders;
 - (f) File reports in a form acceptable to the Commissioner concerning the market value of an insurer's assets;
 - (g) Limit or withdraw from certain investments or discontinue certain investment practices to the extent the Commissioner deems necessary;
 - (h) Document the adequacy of premium rates in relation to the risks insured;
 - (i) File, in addition to regular annual statements, interim financial reports on the form adopted by the National Association of Insurance Commissioners or in such format as promulgated by the Commissioner;
 - (j) Take any other appropriate remedial action.

If the insurer is a foreign insurer the Commissioner's order may be limited to the extent provided by statute.

- (3) (a) Any insurer subject to an order under Subparagraph (2) may request a hearing to review that order, which request must be received within thirty (30) days of the issuance of the order or review shall be deemed waived. The order shall be accompanied by notice of the conduct, condition or ground upon which the Commissioner based the order and notice of an opportunity to be heard consistent with the provisions of the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5 of the Tennessee Code Annotated. Unless mutually agreed between the Commissioner and the insurer, the hearing shall occur within fifteen (15) days after the date of the request for hearing and shall be held at the main offices of the Department or, in the discretion of the Commissioner, at some other place convenient to the parties designated by the Commissioner. When the date, time and place of the hearing is determined, notice of same shall be given to the insurer.
- (b) The order provided for in Subparagraph (2) is not an order of administrative supervision. The Commissioner deems that such order relates to supervision in that it is administrative corrective action to determine the condition of the insurer and to abate the Commissioner's determination that the insurer may be in hazardous or potentially dangerous condition. An insurer's failure to comply with the order could lead to administrative supervision or other proceedings.
- (c) Matters under this chapter shall be treated in compliance with *T.C.A. §56—9—504*.

Authority: *T.C.A. §§ 4—5—101 et seq., 56—1—408, 56—1—409, 56—2—301, 56—9—101, 56—9—106, 56—9—503, 56—9—504, 56—9—508, 56—11—206 and 56—11—209. Administrative History:* Original rule filed December 20, 1993; effective March 5, 1994.

0780—1—66—.05 JUDICIAL REVIEW

Any order or decision of the Commissioner shall be subject to review in accordance with the Uniform Administrative Procedures Act, Title 4, Chapter 5 of the Tennessee Code Annotated.

Authority: *T.C.A. §§4—5—101 et seq., 56—1—408, 56—1—409, 56—2—301, 56—9—101, 56—9—106, 56—9—503, 56—9—508, 56—11—206 and 56—11—209. Administrative History: Original rule filed December 20, 1993; effective March 5, 1994.*

0780—1—66—.06 SEVERABILITY

If any provisions of this chapter be held invalid, the remainder shall not be affected.

Authority: *T.C.A. §§56—1—408, 56—1—409, 56—2—301, 56—9—101, 56—9—106, 56—9—503, 56—9—508, 56—11—206 and 56—11—209. Administrative History: Original rule filed December 20, 1993; effective March 5, 1994.*